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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 NELSON CHILIN,
11 Plaintiff,
12 vs.

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14 FRIEND F. MOSSAD; LUIS JOSE
15 MALDONADO; JORGE MALDONADO;
16 and DOES 1 to 10,
17 Defendants.

Case No.: 5:23-cv-01053 JGB (SPx)

FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF FOR DENIAL OF
CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.

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25 Plaintiff NELSON CHILIN (“Plaintiff”) complains of Defendants LUIS JOSE
26 MALDONADO; JORGE MALDONADO; and DOES 1 to 10 (“Defendants”) and alleges
27 as follows:
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PARTIES

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2 1. Plaintiff is a California resident with a physical disability. Plaintiff is a
3 paraplegic due to spinal cord injury and is substantially limited in his ability to walk.
4 Plaintiff requires the use of a wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for a bakery
7 (“Business”) located at or about 214 W. Highland Ave., San Bernardino, California.

8 3. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
10 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
11 Court to amend this Complaint when the true names and capacities have been
12 ascertained. Plaintiff is informed and believes and, based thereon, alleges that each such
13 fictitiously named Defendants are responsible in some manner, and therefore, liable to
14 Plaintiff for the acts herein alleged.

15 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
16 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
17 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
18 the things alleged herein was acting with the knowledge and consent of the other
19 Defendants and within the course and scope of such agency or employment relationship.

20 5. Whenever and wherever reference is made in this Complaint to any act or
21 failure to act by a defendant or Defendants, such allegations and references shall also be
22 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
23 and severally.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
26 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
27 *seq.*)

28 7. Plaintiff’s claims are authorized by 28 USC §§ 2201 and 2202.

1 8. Venue is proper in this court pursuant to 28 USC §1391(b). The real
2 property which is the subject of this action is located in this district, Los Angeles County,
3 California, and that all actions complained of herein take place in this district.

4 **FACTUAL ALLEGATIONS**

5 9. In or about March of 2023, Plaintiff went to the Business.

6 10. The Business is a bakery business establishment, open to the public, and is a
7 place of public accommodation that affects commerce through its operation. Defendants
8 provide parking spaces for customers.

9 11. While attempting to enter the Business during each visit, Plaintiff personally
10 encountered a number of barriers that interfered with his ability to use and enjoy the
11 goods, services, privileges, and accommodations offered at the Business.

12 12. To the extent of Plaintiff's personal knowledge, the barriers at the Business
13 included, but were not limited to, the following:

- 14 a. Defendants failed to comply with the federal and state standards for
15 the parking space designated for persons with disabilities. Defendants
16 failed to provide the parking space identification sign with the
17 International Symbol of Accessibility.
- 18 b. Defendants failed to comply with the federal and state standards for
19 the parking space designated for persons with disabilities. Defendants
20 failed to post required signage such as "Van Accessible," "Minimum
21 Fine \$250" and "Unauthorized Parking."
- 22 c. Defendants failed to comply with the federal and state standards for
23 the parking space designated for persons with disabilities. Defendants
24 failed to provide proper van accessible space designated for the
25 persons with disabilities.
- 26 d. Defendants failed to comply with the federal and state standards for
27 the parking space designated for persons with disabilities. Defendants
28 failed to paint the ground as required.

1 e. Defendants failed to comply with the federal and state standards for
2 the parking space designated for persons with disabilities. Defendants
3 failed to provide an access aisle.

4 13. These barriers and conditions denied Plaintiff the full and equal access to the
5 Business and caused Plaintiff difficulty and frustration. Plaintiff wishes to return and
6 patronize the Business; however, Plaintiff is deterred from visiting the Business because
7 his knowledge of these violations prevents him from returning until the barriers are
8 removed.

9 14. Based on the violations, Plaintiff alleges, on information and belief, that
10 there are additional barriers to accessibility at the Business after further site inspection.
11 Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-
12 Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008).

13 15. In addition, Plaintiff alleges, on information and belief, that Defendants
14 knew that particular barriers render the Business inaccessible, violate state and federal
15 law, and interfere with access for the physically disabled.

16 16. At all relevant times, Defendants had and still have control and dominion
17 over the conditions at this location and had and still have the financial resources to
18 remove these barriers without much difficulty or expenses to make the Business
19 accessible to the physically disabled in compliance with ADDAG and Title 24
20 regulations. Defendants have not removed such barriers and have not modified the
21 Business to conform to accessibility regulations.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

24 17. Plaintiff incorporates by reference each of the allegations in all prior
25 paragraphs in this complaint.

26 18. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual
27 shall be discriminated against on the basis of disability in the full and equal enjoyment of
28 the goods, services, facilities, privileges, advantages, or accommodations of any place of

1 public accommodation by any person who owns, leases, or leases to, or operates a place
2 of public accommodation. *See* 42 U.S.C. § 12182(a).

3 19. Discrimination, *inter alia*, includes:

- 4 a. A failure to make reasonable modification in policies, practices, or
5 procedures, when such modifications are necessary to afford such
6 goods, services, facilities, privileges, advantages, or accommodations
7 to individuals with disabilities, unless the entity can demonstrate that
8 making such modifications would fundamentally alter the nature of
9 such goods, services, facilities, privileges, advantages, or
10 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to take such steps as may be necessary to ensure that no
12 individual with a disability is excluded, denied services, segregated or
13 otherwise treated differently than other individuals because of the
14 absence of auxiliary aids and services, unless the entity can
15 demonstrate that taking such steps would fundamentally alter the
16 nature of the good, service, facility, privilege, advantage, or
17 accommodation being offered or would result in an undue burden. 42
18 U.S.C. § 12182(b)(2)(A)(iii).
- 19 c. A failure to remove architectural barriers, and communication barriers
20 that are structural in nature, in existing facilities, and transportation
21 barriers in existing vehicles and rail passenger cars used by an
22 establishment for transporting individuals (not including barriers that
23 can only be removed through the retrofitting of vehicles or rail
24 passenger cars by the installation of a hydraulic or other lift), where
25 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 26 d. A failure to make alterations in such a manner that, to the maximum
27 extent feasible, the altered portions of the facility are readily
28 accessible to and usable by individuals with disabilities, including

1 individuals who use wheelchairs or to ensure that, to the maximum
2 extent feasible, the path of travel to the altered area and the
3 bathrooms, telephones, and drinking fountains serving the altered
4 area, are readily accessible to and usable by individuals with
5 disabilities where such alterations to the path or travel or the
6 bathrooms, telephones, and drinking fountains serving the altered
7 area are not disproportionate to the overall alterations in terms of cost
8 and scope. 42 U.S.C. § 12183(a)(2).

9 20. Where parking spaces are provided, accessible parking spaces shall be
10 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every
11 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in
12 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA
13 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall
14 be van parking space. 2010 ADA Standards § 208.2.4.

15 21. Under the ADA, the method and color of marking are to be addressed by
16 State or local laws or regulations. See 36 C.F.R., Part 1191. Under the California
17 Building Code (“CBC”), the parking space identification signs shall include the
18 International Symbol of Accessibility. Parking identification signs shall be reflectorized
19 with a minimum area of 70 square inches. Additional language or an additional sign
20 below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A
21 parking space identification sign shall be permanently posted immediately adjacent and
22 visible from each parking space, shall be located with its centerline a maximum of 12
23 inches from the centerline of the parking space and may be posted on a wall at the
24 interior end of the parking space. See CBC § 11B-502.6, et seq.

25 22. Moreover, an additional sign shall be posted either in a conspicuous place at
26 each entrance to an off-street parking facility or immediately adjacent to on-site
27 accessible parking and visible from each parking space. The additional sign shall not be
28 less than 17 inches wide by 22 inches high. The additional sign shall clearly state in

1 letters with a minimum height of 1 inch the following: “Unauthorized vehicles parked in
2 designated accessible spaces not displaying distinguishing placards or special license
3 plates issued for persons with disabilities will be towed always at the owner’s expense...”
4 See CBC § 11B-502.8, et seq.

5 23. Here, Defendants failed to provide the parking space identification sign with
6 the International Symbol of Accessibility. In addition, Defendants failed to provide the
7 signs stating “Minimum Fine \$250” and “Van Accessible.” Moreover, Defendants failed
8 to provide the additional sign with the specific languages stating “Unauthorized vehicles
9 parked in designated accessible spaces not displaying distinguishing placards or special
10 license plates issued for persons with disabilities will be towed always at the owner’s
11 expense...”

12 24. For the parking spaces, access aisles shall be marked with a blue painted
13 borderline around their perimeter. The area within the blue borderlines shall be marked
14 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting
15 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall
16 be painted on the surface within each access aisle in white letters a minimum of 12 inches
17 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §
18 11B-502.3.3.

19 25. Here, Defendants failed to provide a proper access aisle as there were no
20 “NO PARKING” marking and blue hatched lines painted on the parking surface.
21 Moreover, Defendants failed to provide the access aisle with the minimum width of 96
22 inches.

23 26. Access aisles shall extend the full length of the parking spaces they serve.
24 2010 ADA Standards § 502.3.2.

25 27. Here, Defendants failed to provide an access aisle.

26 28. A public accommodation shall maintain in operable working condition those
27 features of facilities and equipment that are required to be readily accessible to and usable
28 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

